



Report Title: Traffic Management Act 2004 and adoption of a Permit Scheme

Forward Plan reference number (if applicable): [add reference]

Report of: Niall Bolger, Director of Urban Environment

Wards affected: ALL

Report for: Key Decision

**1. Purpose**

1.1 Approval to operate a Permit Scheme under part 3 of the Traffic Management Act 2004

**2. Introduction by Cabinet Member**

2.1 The report highlights the implications of the sections of the Traffic Management Act that come into force on 1<sup>st</sup> April 2008 and the opportunity for the Borough to be amongst the first Council's to implement a Permit Scheme. The opportunity to be part of a common Permit Scheme for London should save costs and confusion, and help the Council to demonstrate good practice in fulfilling its Network Management Duty.

**3. Recommendations**

- 3.1 That the Director of Urban Environment be authorised to make the necessary arrangements to prepare and submit, in conjunction with the London Permit Scheme Group, an application to the Secretary of State under Part 3 Traffic Management Act 2004 to operate a highway authority Permit Scheme.
- 3.2 That the Director of Urban Environment be authorised to agree any variations to the Scheme agreed by the London Permit Scheme Group to achieve consistency throughout participating Boroughs in London, or as Directed by the Secretary of State.
- 3.3 That upon the Secretary of State approval the scheme be adopted and brought into effect after notice has been given to interested parties as required under the Regulations.

WPB

Contact Officer: : **Mike Tobin, Interim Head of Highways**

#### 4. Chief Financial Officer Comments

- 4.1 The TMA 2004 makes provision for highway authorities to set up and operate Permit Schemes for the management and control of works activities on the highway. This activity is currently governed by the New Roads and Street Works Act 1991 and the new arrangements will mainly, but not completely replace these existing regulations.
- 4.2 The Government will set maximum permitted charges for permits and variations to permits. Guidelines indicate that only a few central London boroughs will be allowed to set permit fees at the maximum, otherwise a discount factor of 15% is suggested by DfT. Within the aforementioned constraints, authorities can set permit fees to fully recover costs including appropriate overheads. The new income stream is meant to support the additional costs associated with the new traffic network management duty placed on authorities by the Act.
- 4.3 In budgetary terms, the additional income from the new scheme is likely to more or less off-set the estimated reduction in income from the existing NRSWA scheme.

#### 5. Head of Legal Services Comments

- 5.1 The Head of Legal Services comments that each Highway Authority retains its own identity when operating a Permit Scheme, but the Joint London Permit Scheme Group of which Haringey forms part makes for valuable coordination with interested parties which is a primary objective of the legislation.
- 5.2 At the time of preparing this report there are 16 London Boroughs co-operating in the London Permit Scheme. Under Part 3 of the Traffic Management Act, the Secretary of State may direct authorities to prepare and submit a joint scheme, and it seems likely that at some stage the Secretary of State will promote a London – wide Permit Scheme. The recommendations allow for variations either by agreement or by the Secretary of State using his powers of Direction.
- 5.3 The date of implementation of the Scheme depends first on a Statutory Order of the Secretary of State and in practical terms also on the computer software being developed by Eton Development Software on behalf of the Joint London Permit Scheme. Interested parties are required to be notified at least 4 weeks before a Scheme takes effect as well as before it is varied or revoked.

#### 6. Local Government (Access to Information) Act 1985

- 6.1 The Traffic Management Act 2004, New Roads and Street Works Act 1991, Network

## 7. Strategic Implications

7.1 In July 2004 the Traffic Management Act gained Royal Assent. The Act is comprised of seven parts and accompanying schedules as detailed in Appendix 1 which are being implemented in stages. The relevant parts of the Act that have a direct impact on the Highways Services are detailed below.

7.2 **Part 2- Network Management Duty.** This was implemented in January 2005.

It places a statutory duty on all local authorities to expedite the movement of traffic (including pedestrians and cyclists) safely on its own network and facilitate the same on networks of neighbouring authorities and in London Transport for London.

It requires local authorities to appoint a Traffic Manager, which the Borough has done and is currently the Interim Head of Highways.

If it can be demonstrated that any authority is failing in its Network Management Duty the Act provides for the Secretary of State for England to appoint a Traffic Director and sets out the procedure for such intervention. The regulations also provide for the cost of intervention to be charged to the local authority and this cost is anticipated to be up to £245,000 depending upon the level of duties taken over by the Traffic Director.

On the 12th of May 2007 the Traffic Management Act 2004 Intervention Criteria came into effect under section 27 of the Act. This provides the guidance on what basis the Secretary of State would take enforcement action against an authority deemed to be failing in their Network Management Duty (NMD). Part of the criteria for judging an authorities performance in its NMD will be the extent to which they have exercised any powers in support of that action. The introduction of the permit scheme is seen as an important step in demonstrating this.

7.3 **Part 3 – Permit Schemes.**

This makes provision for highway authorities (individually or by two or more acting together) to set up and operate Permit Schemes for the management and control of activities on the highway in accordance with Regulations made by the Secretary of State under section 37 of the Act. We may now also attach conditions to permits such as:

- The days of the week and the times of day on which works may be carried out.
- The duration of the works.
- The amount of highway space that the works may occupy.
- The provision of advance information and publicity measures.

Regulations were made in November 2007, coming into force on 1 April 2008. Where a Permit Scheme is submitted and approved (with such modifications if any as the Secretary of State may direct) a separate statutory order will be made specifying the date the Permit Scheme will come into effect.

This report is the Council's response to Part 3. The implementation of the Permit Scheme is fundamental in giving the Council the necessary tool to control utility works efficiently and effectively. The delegation to the Director of Urban Environment the authority to prepare and submit an application under Part 3 of the Act will enable the correct procedures to be carried out with the other Authorities.

The implications of Haringey not adopting a Permit Scheme are as follows:-

- It will fail in its network management duty to co-ordinate work on the highway in a more effective way.
- It will lose out on a significant income stream.
- It will reduce the Council's ability to make Haringey a safer and better place to live.

## **8. Financial Implications**

8.1 This report sets out the Council's proposals for the introduction of a Permit Scheme.

8.2 Income from the Permit Scheme will start concurrently with the introduction of the scheme. Separate accounts of permit fee income and costs of operating the scheme will need to be kept, and regular reviews undertaken to ensure income does not exceed the allowable costs of operating the scheme. The full year income from the scheme is estimated at £461,000 as detailed in the table at Appendix 2.

8.3 A new structure and re-branding for highways is being implemented and will address a number of aims including the requirement to meet the statutory Network Management Duty under the TMA 2004. Funding from operating the new Permit Scheme will contribute towards meeting the cost of the new structure which was reported separately to General Purposes Committee on March 11. If it can be demonstrated that any authority is failing in its Network Management Duty the Act provides for the Secretary of State to appoint a Traffic Director and sets out the procedure for such intervention. The regulations also provide for the cost of intervention to be charged to the local authority and this cost is anticipated to be up to £245,000 depending upon the level of duties taken over by the Traffic Director. It is extremely unlikely that the Council will find it self in this position.

8.4 The existing system of managing and controlling highways activities under NRSWA 1991 is revised by the TMA 2004 with effect from 1<sup>st</sup> April 2008. The changes in regulations under section 74 of NRSWA 1991 mean that many charges the Council currently impose where works are unreasonably prolonged will be reduced to a maximum of £50. As an example of this, one charge for financial year 2007/08 was invoiced for a value of £500 whereas under the new regulations this would have been reduced to £50. However, in the last couple of years the Council has overachieved it's target in respect of this income. Projected income from this source for 2007/08 is £1m compared to the base budget of £0.6m, the excess being used to support staffing and other costs within the highways budget. It is estimated the revisions will result in a reduction in income from the NRSWA scheme of up to £400,000.

## **9 Legal Implications**

- 9.1 There are Codes of Practice and Statutory Guidance to which Permits schemes must have regard, and these are quite detailed. By Regulation 15 of the Traffic Management Permit Scheme (England) Regulations 2007 Schemes must allow for the variation or revocation of permits and permit conditions. The information required on application for variation or revocation and the time limit within which it must be considered must be set out. The Permit Authority's policy in respect of the exercise of its initiative in reviewing varying or revoking permits and permit conditions must be included in the Scheme.
- 9.2 The recommendations provide for consistency among the participating members of the London Permit Scheme which will extend to the administration and policy of conditions and enforcement.
- 9.3 Under a Permit Scheme the highway's activities will be treated in exactly the same way with regard to co-ordination of works and the setting of conditions although exempt from fees. The Department of Transport Guidance is that Highway Authorities will need to ensure sufficient separation between those operating the Permit Scheme and those responsible for highway activities so that parity of treatment is evident

## **10 Equalities Implications**

- 10.1 There are no implications on Equality issues.

## **11 Consultation**

- 11.1 During the process of finalising the regulations the Department for Transport consulted with all highway authorities, statutory undertakers and other interested organisations.
- 11.2 As part of the statutory requirements to operate a Permit Scheme, Haringey must consult all statutory undertakers, transport authorities, Transport for London, the emergency services and other interested parties about the intention to adopt a Permit Scheme, and the method by which it will be operated. This will be done as part of the process with the other Boroughs.

## **12 Background**

- 12.1 The New Roads and Street Works Act 1991 placed an obligation on statutory undertakers to submit notifications of work to highway authorities informing them of their intention to work on the public highway. Permit Schemes under part 3 of the Traffic Management Act 2004 changes the emphasis from statutory undertakers informing us of their intention to conduct works, to our granting permission for works to be carried out at dates and times that we, as the highway authority, specify.
- 12.2 In addition to this statutory undertakers must also pay a fee for permits as detailed in Appendix 2.

12.3 As part of the monitoring of Permit Schemes by the Department for Transport (DfT) we are also required to produce performance indicators to demonstrate that the scheme is being operated with parity of treatment between highway authority and statutory undertaker's works. The DfT has provided a list of 7 performance indicators, two of which are compulsory with at least two more to be used as the highway authority sees fit. Within the London Permit Scheme it is proposed to use the indicators below:

- The number of permit and permit variation applications received, the number granted and the number refused.
- The number of conditions applied by type.
- The number of occurrences of reducing the application period
- The number of agreements to work in a section 58 and section 58A restrictions (these are to do with the roads where restrictions to the execution of street works can be enforced for a period between 6 months and 5 years).

12.4 Other actions that we have taken to support our NMD are as follows:-

- Establishing a system of annual surveys - to help establish baseline figures against which traffic levels and congestion in Haringey can be measured in future.
- Investigatory work on traffic levels and identifying congestion hot spots in Haringey.
- Consideration of Travel Awareness schemes through effective marketing campaigns, Safer Routes to School and Work place Travel Plans.
- Consideration of bus priority measures, where clear benefits can be demonstrated.
- Effective partnership working and co-ordination with our stakeholders by attending quarterly meetings with other boroughs to discuss NMD policy.
- Promoting the benefits of the NMD across the Council- through sharing information and offering advice on the implications of the duty.
- Undertake research and set up traffic models to predict future trends to help develop transport policies and guide the assessment of developments.
- Build on policies that encourage sustainable transport by developing fresh ideas and innovative solutions.
- Development of NMD criteria for assessing transport/highway schemes as well as planning applications.
- Review the cabinet reporting procedure to ensure that cabinet members are fully acquainted with the NMD objective when presenting transport schemes for approval.

## 13 Conclusion

13.1 Failure to fulfil its NMD could have severe consequences for Haringey. The Department for Transport have in place intervention powers that it will use on those local authorities that are not meeting their NMD. A failing borough can expect a Traffic Director to be imposed upon it at an estimated cost of £245,000.

13.2 The Permit Schemes will provide a powerful tool for authorities to be in a better position to coordinate street works and road works thereby reducing congestion. This

will improve the safety of the local community and make net gains in environmental issues and keeping traffic moving.

#### **14 Use of Appendices / Tables / Photographs**

- 14.1 Appendix 1 – Relevant extracts from the Traffic Management Act.
- Appendix 2 – Permit Fees, Works Volume and income projection.

## APPENDIX 1

### Summary of component parts of the Traffic Management Act 2004

The Act comprises of seven Parts and accompanying schedules. It is underwritten by codes of practices that are currently being revised.

#### Part 1 -Traffic Officers – operating on Highways Agency Network

- Designation of individuals as traffic officers to operate on Highway Agency Roads.
- Powers to direct and stop traffic.
- Removal of certain vehicles.

#### Part 2 - Network Management by Local Traffic Authorities (LTA)

- Reduce congestion and disruption on Haringey's network and other networks.
- Appoint a Traffic Manager.
- Department Of Transport intervention powers and ability to appoint a Traffic Director on a failing borough.

***Parts 3, 4 & 5 of the Act gives authorities more powers to coordinate work effectively, with the aim of minimising disruption. It also provides for additional duties on highways authorities so that all works on the road are better managed and co-ordinated.***

#### Part 3 - Permit Schemes (for the management of works on the highway)

- Preparation of Permit Schemes.
- Secretary of State has the power to direct a local highways authority to prepare and submit a Permit Scheme
- Application to Secretary of State to become a Permit Authority
- Implementation of Permit Scheme
- Variations and revocations of Permit Schemes
- Permit regulations
- Codes of Practice for Permit Scheme currently out to consultation

#### Part 4 - Street works

- Increase in penalties on utilities for non compliance of the New Roads and Streetworks Act 1991 (NRSWA)
- Fixed Penalty Offences - as an alternative to legal action for certain offences under NRSWA
- Coordination of work by street authority
- Notices - 3 months advance notices are now require to notify local authorities of major works
- Directions - Local Authorities can enforce the working times of street works. Also can advise utilities where not to lay new apparatus



## **APPENDIX 1 continued**

- Restrictions – Following substantial road and street works longer embargo periods can be placed on a road to deter further excavations taking place
- Power of street authority to require undertaker to resurface street following certain works
- Duty of utility companies to notify street authority on reinstatements
- Inspection of street works
- Keeping of street works register and records of location of apparatus.
- Qualification of supervisors and operatives
- Codes of Practices are being rewritten to incorporate changes brought by the Traffic Management Act 2004 on the existing NRSWA legislation

### **Part 5 - Highways and Roads**

- Submit notifications to TfL of any works or schemes taking place on or near its Strategic Road Network or near Transport for London Road Network.
- Additional powers will be given to Local Authorities to deal with offences arising from the Highway Act 1980 i.e. FPN given to scaffold and skip operators who transgress their licence.

### **Part 6 – Civil Enforcement of Traffic Contraventions. – extends certain powers to local authorities outside London**

- Moving traffic offences
- Immobilisations of vehicles where penalty charge payable
- Prohibition of double parking
- Prohibition of parking at dropped footways
- Recovery of debts

### **Part 7 – Miscellaneous and General**

- Power to inspect blue badges
- Applications of surplus income from parking places

## APPENDIX 2

The regulations prescribed maximum fees for both permits and variations to permits. The Department for Transport have indicated that even within London they will expect to see variations in fees charged between Transport for London, inner London boroughs and outer London boroughs. With this in mind we are proposing to initially set permit and variation to permit charges at approximately 15% below the allowed maximum.

Work type	Major works in TS streets	Major works in non TS streets	Standard Works in TS streets	Standard works in non TS streets	Minor works in TS streets	Minor works in non TS streets	Immediate works in TS streets	Immediate works in non TS streets
Maximum permit fee	£345	£225	£130	£75	£65	£45	£60	£40
Haringey Permit fee (85%)	£293.25	£191.25	£111.50	£63.75	£55.25	£38.25	£51.00	£34.00
Monthly average no. permits	2.3	10.3	21.3	53.3	102	406.3	52.6	136.6
Total monthly Income	£674.48	£1969.88	£2374.95	£3397.88	£5635.50	£15540.98	£2682.60	£4644.40
Maximum variation to permit fee	£40	£35	£40	£35	£40	£35	£40	£35
Haringey variation to permit fee (85%)	£34	£30	£34	£30	£34	£30	£34	£30
Estimated annual no. permit variations (6%)	1.66	7.42	15.34	38.34	73.44	292.54	37.87	98.35
Estimated annual income	£56.44	£222.60	£521.56	£1150.20	£2496.96	£8776.20	£1287.58	£2950.50
<b>Annual income variations</b>	<b>£17462</b>							
<b>Annual income permits</b>	<b>£443,048</b>							
<b>Total annual income</b>	<b>£460,510</b>							

The total annual income figure above does not include other streams of income generated as a result of permit scheme operations, such as sample and defect inspections etc.